BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION

IN RE:	Karen Jan & Joseph, Jr. Terre Ward 080, Block 009, Parcel 00001 Residential Property Tax Year 2006	)) Shelby County))

INITIAL DECISION AND ORDER

Statement of the Case

The subject property is presently valued as follows:

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
$50,300	$148,800	$199,100	$49,775

An appeal has been filed on behalf of the property owner with the State Board of Equalization. The undersigned administrative judge conducted a hearing in this matter on July 10, 2007 in Memphis, Tennessee. In attendance at the hearing were Joseph Terre, Jr., the appellant, and Shelby County Property Assessor's representatives John Zelinka, Esq. and staff appraiser Ron Nesbitt.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of a single family residence located at 6603 Massey Lane in Memphis.

I. Jurisdiction

The threshold issue before the administrative judge concerns jurisdiction. This issue arises from the fact the taxpayer failed to appear for his hearing on February 6, 2007 before the Shelby County Board of Equalization.

The administrative judge finds that Tennessee law requires a taxpayer to appeal an assessment to the County Board of Equalization prior to appealing to the State Board of Equalization. Tenn. Code Ann. §§ 67-5-1401 & 67-5-1412(b). A direct appeal to the State Board is permitted only if the assessor does not timely notify the taxpayer of a change of assessment prior to the meeting of the County Board. Tenn. Code Ann. §§ 67-5-508(a)(3) & 67-5-903(c). Nevertheless, the legislature has also provided that:

> The taxpayer shall have right to a hearing and determination to show reasonable cause for the taxpayer's failure to file an appeal as provided in this section and, upon demonstrating such reasonable cause, the [state] board shall accept such appeal from the taxpayer up to March 1 of the year subsequent to the year in which the assessment was made.

Tenn. Code Ann. § 67-5-1412(e). The Assessment Appeals Commission, in interpreting this section, has held that:

> The deadlines and requirements for appeal are clearly set out in the law, and owners of property are charged with knowledge of them. It was not the intent of the 'reasonable cause' provisions to waive these requirements except where the failure to meet them is due to illness or other circumstances beyond the taxpayer's control.

Associated Pipeline Contractors, Inc. (Williamson County, Tax Year 1992). *See also John Orovets* (Assessment Appeals Commission, Cheatham County, Tax Year 1991). Thus, for the State Board of Equalization to have jurisdiction in this appeal, the taxpayer must show that circumstances beyond his control prevented him from appearing before the Shelby County Board of Equalization.

Mr. Terre testified that he suffers from a blood pressure condition which prevented him from appearing for his scheduled hearing. Mr. Terre indicated that he attempted to contact the local board in order to reschedule the hearing.

The administrative judge finds that Mr. Terre's failure to perfect his appeal to the Shelby County Board of Equalization resulted from a health problem beyond his control. Accordingly, the administrative judge finds the taxpayer established reasonable cause for not appearing before the Shelby County Board of Equalization, and the State Board of Equalization therefore has jurisdiction in this matter.

II. Value

The taxpayer contended that subject property should be valued at $150,000. In support of this position, the taxpayer argued that the 2005 countywide reappraisal caused the appraisal of subject property to increase by over $50,000 despite the lack of any improvements. In addition, the taxpayer asserted that "the East Memphis real estate bubble has emphatically burst" as evidenced by the fact twenty-one (21) homes are listed for sale within a one mile radius of subject property.[1] Moreover, the taxpayer maintained subject property has experienced a dimunition in value due to increased noise and traffic associated with the opening of Humphreys Boulevard, the construction of Soloman Schecter Temple, and the expansion of Lausanne Collegiate School. Finally, the taxpayer questioned why his appraisal was not lowered after advising the assessor of property that subject home has three bedrooms rather than four bedrooms as indicated in the assessment records.

The assessor contended that subject property should remain valued at $199,100. In support of this position, three comparable sales were introduced into evidence. Mr. Nesbitt maintained that the comparables support a value indication of $202,000 after appropriate adjustments.

The basis of valuation as stated in Tennessee Code Annotated Section 67-5-601(a) is that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic

[1] The taxpayer also stated that two zero lot line developments are being constructed in the area.

and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values . . ."

After having reviewed all the evidence in the case, the administrative judge finds that the subject property should be valued at $199,100 based upon the presumption of correctness attaching to the decision of the Shelby County Board of Equalization.

The administrative judge finds that the burden of proof is on the taxpayer. See *Big Fork Mining Company v. Tennessee Water Quality Control Board*, 620 S.W. 2d 515 (Tenn. App. 1981); and State Board of Equalization Rule 0600-7-.11(1):

The administrative judge finds that the fair market value of subject property as of January 1, 2006 constitutes the relevant issue. The administrative judge finds that the Assessment Appeals Commission has repeatedly rejected arguments based upon the amount by which an appraisal has increased as a consequence of reappraisal. For example, the Commission rejected such an argument in *E.B. Kissell, Jr.* (Shelby County, Tax Years 1991 and 1992) reasoning in pertinent part as follows:

> The rate of increase in the assessment of the subject property since the last reappraisal or even last year may be alarming but is not evidence that the value is wrong. It is conceivable that values may change dramatically for some properties, even over so short of time as a year. . .
>
> The best evidence of the present value of a residential property is generally sales of properties comparable to the subject, comparable in features relevant to value. Perfect comparability is not required, but relevant differences should be explained and accounted for by reasonable adjustments. If evidence of a sale is presented without the required analysis of comparability, it is difficult or impossible for us to use the sale as an indicator of value. . . .

Final Decision and Order at 2.

The taxpayer finds that the taxpayer did not introduce any comparable sales to substantiate his contention of value. The administrative judge finds the fact twenty-one (21) homes are for sale within one mile of subject property does not establish subject property has been appraised in excess of its fair market value. Moreover, many, if not all, of the listings presumably occurred after the relevant assessment date of January 1, 2006 and are technically irrelevant.[2] See *Acme Boot Company and Ashland City Industrial Corporation* (Cheatham County - Tax Year 1989) wherein the Assessment Appeals Commission ruled that "[e]vents occurring after [the assessment] date are not relevant unless offered for the limited purpose of showing that assumptions reasonably made on or before the assessment date have been borne out by subsequent events." Final Decision and Order at 3.

[2] January 1, 2006 constitutes the relevant assessment date pursuant to Tenn. Code Ann. § 67-5-504(a).

The administrative judge finds merely reciting factors that could cause a dimunition in value does not establish the current appraisal exceeds market value. The administrative judge finds the Assessment Appeals Commission has ruled on numerous occasions that one must *quantify* the loss in value one contends has not been adequately considered. See, e.g., *Fred & Ann Ruth Honeycutt* (Carter Co., Tax Year 1995) wherein the Assessment Appeals Commission ruled that the taxpayer introduced insufficient evidence to quantify the loss in value from the stigma associated with a gasoline spill. The Commission stated in pertinent part as follows:

> The assessor conceded that the gasoline spill affected the value of the property, but he asserted that his valuation already reflects a deduction of 15% for the effects of the spill. . . . The administrative judge rejected Mr. Honeycutt's claim for an additional reduction in the taxable value, noting that he had not produced evidence by which to quantify the effect of the "stigma." The Commission finds itself in the same position. . . . Conceding that the marketability of a property may be affected by contamination of a neighboring property, we must have proof that allows us to quantify the loss in value, such as sales of comparable properties. . . Absent this proof here we must accept as sufficient, the assessor's attempts to reflect environmental condition in the present value of the property.

Final Decision and Order at 1-2. Similarly, in *Kenneth R. and Rebecca L. Adams* (Shelby Co., Tax Year 1998) the Commission ruled in relevant part as follows:

> The taxpayer also claimed that the land value set by the assessing authorities. . .was too high. In support of that position, she claimed that. . .the use of surrounding property detracted from the value of their property. . . . As to the assertion the use of properties has a detrimental effect on the value of the subject property, that assertion, without some valid method of quantifying the same, is meaningless.

Final Decision and Order at 2.

The administrative judge finds that the assessor's valuation model is based upon square footage and does not distinguish between three bedrooms versus four bedrooms. The administrative judge finds that if having three bedrooms does, in fact, cause a loss in value it should be relatively simple to establish this fact through comparable sales. As previously noted, the taxpayers did not introduce any comparable sales.

ORDER

It is therefore ORDERED that the following value and assessment be adopted for tax year 2006:

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
$50,300	$148,800	$199,100	$49,775

It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **"must be filed within thirty (30) days from the date the initial decision is sent."** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **"identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order"**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or
3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 25th day of July, 2007.

MARK J. MINSKY
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

c: Joseph Terre, Jr., Esq.
Tameaka Stanton-Riley, Appeals Manager